

REMARKS

The Applicant has filed the present Response in reply to the outstanding Official Action of August 23, 2005, and the Applicant believes the Response to be fully responsive to the Official Action for the reasons set forth below in greater detail.

At the onset, the Applicant would like to thank the Examiner for indicating that Claims 6-8 and 20-22 have allowable subject matter and would be allowed if rewritten in independent form including all of the limitations of the rejected base claims and any intervening claims. Accordingly, Claims 6 and 20 have been rewritten in independent form incorporating the subject matter of Claims 1 and 15, respectively. Claims 21 and 22 have been amended to update the listing of the method steps based upon the change in Claim 20, i.e., step d in the original Claim 20 became step g, in the amended claim. No new matter has been added by the aforementioned amendments.

Applicant submits that Claims 6-8 and 20-22 are now in condition for allowance.

Additionally, Applicant would like to note that Claims 1, 2, 5, 9, 10, 15, 16, 19, 23, 24, 29 and 30 have been cancelled.

In the outstanding Official Action, the Examiner rejected Claims 3, 17, 29 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Fujii et al., United States Patent No. 5,991,344 (hereinafter "Fujii") in view of the admitted prior art (hereinafter "AAPA") and Sasaki et al., United States Patent No. 3,461,274 (hereinafter "Sasaki"). The Examiner's rejection of Claims 29-30 has been rendered moot by the cancellation of these claims. However, Applicant respectfully disagrees with the Examiner's rejection of Claims 3 and 17 and traverses with at least the following analysis.

Applicant submits that the claimed invention is patentably distinct from the cited references whether taken alone or in any combination thereof. Fujii does not teach the claimed structure or function. Fujii does not teach a phase shifter or its function, as recited in Claims 3 and 17. Fujii teaches employing automatic frequency control (AFC); the claimed invention does not use AFC.

Specifically, both Fujii and Sasaki mention and teach AFC. In stark contrast, the frequency is not controlled or swept in the claimed invention. In fact, the frequency is kept constant. The claimed invention addresses a problem of the prior art device, i.e., large power consumption. A significant cause of this power consumption is changing the frequency. The advantage of the claimed invention is that good reception characteristics can be achieved by only shifting the phase of the A/D converter without changing the frequency.

The Examiner avers that it is clear that the reduction of the frequency offset between transmission and reception equivalently shifts the phase of the input signal of the A/D converter to the desired sampling time and therefore the AFC means and the phase shifting means are functionally equivalent. Applicant respectfully disagrees with this contention.

In order to rely on equivalents as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on the applicant's disclosure or the mere fact that the components at issue are functional or mechanical equivalents. In re Scott, 139 U.S.P.Q. 297 (CCPA 1963). See also MPEP 2144.06.

The Examiner's sole basis for the equivalents contention is the contention that the structures are functionally equivalent when used in the claimed manner. This equivalence, however, was not known and, therefore, the rejection is based on hindsight. This contention is not enough to maintain a case of obviousness. Furthermore, the claimed phase shifter and the prior art's AFC means are structurally different.

Accordingly, Applicant submits that the hypothetical combination of references fails to teach, suggest, or render obvious each and every limitation of Claims 3 and 17 and, therefore, the claims are patentably distinct.

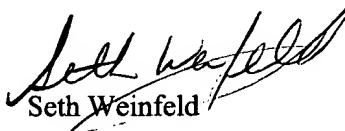
The Examiner also rejected Claims 4 and 18 based upon the above-identified references in further view of Miya et al., which was previously cited. Applicant respectfully disagrees with the rejection and traverses with at least the following analysis.

Miya et al. fails to cure the above-identified deficiencies with respect to the independent claims. Therefore, depend Claims 4 and 18 are patentable over these references for at least the above-identified reasons.

Based upon the foregoing amendments and arguments, Applicant respectfully requests the Examiner withdraw the rejection of Claims 3, 4 and 17, 18 under 35 U.S.C. § 103(a).

In conclusion, the Applicant believes that the above-identified application is in condition for allowance and henceforth respectfully solicits the Examiner to allow the application. If the Examiner believes a telephone conference might expedite the allowance of this application, the Applicant respectfully requests that the Examiner call the undersigned, Applicant's attorney, at the following telephone number: (516) 742-4343.

Respectfully submitted,


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